IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1360 of 2007

Parameswari .. Petitioner

Vs

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Chennai City, Chennai-8. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.C.Paul Kanagaraj
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner's son Jagadeesh @ Jagadeeswaran, son of Magendran, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Challenging the abovesaid detention, the mother of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against the detenu by the second respondent in Proceedings No.313/BDFGISSV/07, dated 12.7.2007, set aside the same and to direct the respondents to produce the body of the detenu, now detained at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

3.1. According to the detaining authority, viz., the second respondent, the ground case is said to have taken place on 2.7.2007 at about 8.30 hours. On receipt of reliable information, in respect of Crime Nos.164 and 165 of 2007 on the file of N2 Kasimedu Police Station for the offences punishable under Sections 392 and 379 IPC, the police personnel surrounded the detenu at the junction of Jeevarathinam Salai and Vinayagapuram Main Road, who threatened them at knife point by uttering filthy words. Further, the detenu picked up soda water bottles and hurled the same against the police personnel. The bottles fell on the road side broken into pieces and the broken pieces scattered all over the road side. The public who were at the spot noticing the atrocious activities ran for safer places apprehending danger to their lives. The normal traffic in that area was totally dislocated. By his action, the detenu created panic. With the help of public, the police personnel arrested the detenu and remanded him to judicial custody. In this regard, a case was registered in Crime No.166/2007 for the offences punishable under Sections 341, 332, 336, 427, 307 and 506(ii) IPC.

3.2. The second respondent, taking note of the above case as a ground case and three adverse cases pending against the detenu in Crime Nos.143/2006, 164/2007 and 165/2007 on the file of N2 Kasimedu Police Station for the offences punishable under Sections 341, 323, 307, 506(ii) 392 and 379 IPC and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner challenges the impugned order of detention dated 12.7.2007 on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the detenu in his representation addressed to the Government dated 17.7.2007 that the detenu was taken by the police attached to N2 Kasimedu Police Station on 27.6.2007 and not on 2.7.2007, as mentioned in the detention

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order, was not considered in the rejection order dated 25.9.2007.

5. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 2.7.2007 with respect to the ground case, in the representation of the detenu dated 17.7.2007, he had specifically stated that he was taken on 27.6.2007 by the Police and was kept under their custody till 2.7.2007 and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 25.9.2007 rejecting the representation of the detenu dated 17.7.2007, had not considered the contention raised by the detenu as to the arrest of the detenu.

6. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention dated 12.7.2007 is vitiated and the same is set aside. The detenu Jagadeesh @ Jagadeeswaran is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St. George, Chennai-600 009.
2. The Commissioner of Police
   Chennai City, Chennai-8.
3. The Superintendent
   Central Prison
   Puzhal, Chennai.
4. The Public Prosecutor
   High Court, Madras.
5. The Joint Secretary to Govt,
   Public Law & Order Department,
   Fort St George, Chennai.

MDR (co)
sg 11/01/08

HCP No.1360 of 2007
20.12.2007

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